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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

05 Civ. 5231 (RJS)

ALBERTO WILLIAM VILAR and GARY
ALAN TANAKA,

Defendants.

New York, N.Y.
March 14, 2014
3:45 p.m.

Before:

HON. RICHARD J. SULLIVAN,

District Judge

APPEARANCES

MARK D. SALZBERG
NEAL RALPH JACOBSON
Attorneys for Plaintiff

VIVIAN SHEVITZ
Attorney for Defendants

ALSO PRESENT: IAN J. GAZES
KATHERINE BUCHANAN
ANDREA LIKWORNIK WEISS
EDWARD T. SWANSON
PAULA K. COLBATH
JULIAN W. FRIEDMAN

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(Case called)

MR. JACOBSON: Neal Jacobson and Mark Salzberg on behalf of the Securities and Exchange Commission.

THE COURT: Good afternoon. I'll do the defendants and then I'm come to the receiver. For the defendants.

MS. SHEVITZ: Vivian Shevitz for both defendants David Berger for Mr. Laros who is not able to be here today.

THE COURT: Good afternoon to each of you. I hope your wrist is all right.

MS. SHEVITZ: For the record, not so great. This gesture --

THE COURT: The thumbs down gesture. You look well.

MS. SHEVITZ: I made it anyway.

THE COURT: Thank you.

Mr. Vilar and Tanaka. Good afternoon.

Then the receiver is here as well.

MR. JACOBSON: Yes, your Honor.

MR. GAZES: Good afternoon, your Honor, Ian Gazes.

THE COURT: There is a number of number of others who are here today. I think my law clerk has canvassed who is here. Many of you have, either yourself or through counsel, made submissions.

MS. SHEVITZ: Can I just put on the record for all the other people, so I have it for the record. I don't really know who is here and I'd like to have it on the record.

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1 THE COURT: It's a public forum, so I don't think
2 people have to identify themselves for being here. There is a
3 number of people who have made submissions. Those have been
4 docketed. There are a number of folks who have indicated they
5 wish to be heard today, and so I think we should identify them.
6 My law clerk took the appearances. It's six people. The
7 individuals, mostly attorneys, but I think at least
8 nonattorney-s, who have spoken to my law clerk and indicated
9 they may wish to be heard today. If you could just identify
10 yourselves for the record.

11 John, read off the names and who they represent.

12 THE LAW CLERK: Andrea Likwornik Weiss, JP Morgan
13 Securities. Paula Colbath for the Sweetlands and Alfred
14 Heitkonig. Edward Swanson for Lily Cates. Julian Friedman for
15 Paul and Dean Marcus. Patrick Begos for the Mayers family.
16 And Katherine Buchanan for Robin Sayko.

17 THE COURT: Everyone else is welcome to be here. It's
18 a public courtroom. So anyone who wishes to come is certainly
19 welcome to be here. But those are the ones who indicated they
20 may wish to be heard, and I think all or most of those have
21 made a submission of some kind.

22 Mr. Heitkonig may want to appear on his own behalf.

23 What I propose to do is first hear from the receiver,
24 the receiver has made a couple of motions, original, revised,
25 and then a reply. I reviewed those. You have had the benefit

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1 of reviewing also the objections and arguments made by others.
2 I think you addressed most of those in your reply. If there
3 are other things that you wish to cover, I'll give you an
4 opportunity to do that.

5 Maybe we should use that lecturn over there, which has
6 a microphone. I think there might be an advantage to that if
7 everyone uses that. Just tilt it slightly.

8 MR. GAZES: Good afternoon, your Honor. I'm very
9 pleased to be here before your Honor. Having proposed an
10 interim distribution, I know it's been the goal of the court
11 for some time, as well as the various parties, to finally get
12 some funds back to the various investors. The amended motion
13 was a thoughtful motion in consideration of many conversations
14 with almost all of the parties here today, getting back their
15 feedback and their thoughts in connection with what the
16 proposed distributions should be or not be. Unfortunately,
17 three or four of those 33 claimants have decided that a
18 different proposed distribution should be applied, but we are
19 all happy to be here to even be discussing a distribution
20 process.

21 THE COURT: We should be clear that you're talking
22 really about the interim distribution process, and you're at
23 least at this point agnostic as to the final distribution
24 process.

25 MR. GAZES: That's correct, your Honor.

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1 You are correct. Most of my papers set out my
2 position in connection with the various ideas and objections
3 that have been filed before you. I just want to make sure that
4 it's clear that the funds that I'm holding are in what is known
5 as an ATGF 2 account. The investment vehicles that were
6 utilized by the investors throughout their investments are ATGF
7 and GFRDA. There are no investment vehicles that I can
8 identify that were utilized for those investments. So it
9 clearly appears to me that all funds were commingled, that
10 despite the different investment types, everyone was similarly
11 treated and that the proposal I made to your Honor I believe
12 was the most fairest and most equitable proposal for this
13 interim distribution purposes.

14 The only variation that I would have to that proposed
15 distribution is the Sayko objection had argued because they
16 were a Rhodes investment that it was unfair since their Rhodes
17 investment was converted by the defendants to a GFRDA
18 investment vehicle, which did not exist, according to my
19 records, that she be treated as the other Rhodes investors that
20 they claim would be calculated based on the time of conversion
21 to the GFRDA. And I've thought about it and I've discussed it
22 with my accountants and we did revise the distribution to just
23 do that, that it did appear that it was not equitable to treat
24 their initial investment as the Rhodes investment when in fact
25 we had a statement from them showing the GFRDA conversion and

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1 value of those investments. There were four investors that
2 fall within that category, your Honor, and I do have a revised
3 distribution which ultimately I would submit to your Honor, if
4 you'd like me to, which reflects that revision.

5 Other than that, the only other issue that I wanted to
6 bring to your attention was with JP Morgan there has been a lot
7 of discussion that interest was not being paid on the accounts.
8 As with my accounts now, I'm told that the commercial banks and
9 these types of accounts do not pay interest, even if they sweep
10 the accounts when the interest is 50 basis points or less. And
11 that is why the bank did not pay interest on the accounts when
12 the fed rate dropped significantly, which it still is a very
13 low rate, no interest is paid on those accounts.

14 THE COURT: That's in conformity with the agreement or
15 the contract with the bank and the account?

16 MR. GAZES: I don't know if it specifically provides
17 for that, your Honor. I didn't see a provision. But counsel
18 to the bank is here and can address that issue for your Honor.
19 I did ask her to come down here. And after all, she is seeking
20 to be paid their fees and expenses.

21 THE COURT: But interest was paid up until --

22 MR. GAZES: It dropped 50 basis points, your Honor.

23 THE COURT: Which was approximately when?

24 MR. GAZES: I believe it was in late 2000s.

25 Ms. Weiss, are you here?

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MS. LIKWORNIK WEISS: I am here, your Honor.

The interest rate on the account is the opening federal funds rate minus 50 basis points. So since 2009, no interest has been earned on the accounts, given the low rate of interest, and that's why no interest has accrued after December 2008. The statements reflect that interest was credited on the accounts through the end of 2008.

THE COURT: That's an agreement that was just oral or it was part of a written agreement?

MS. LIKWORNIK WEISS: There is a provision in the contract, I believe I cite it in my letter, basically let Bear Stearns, not JP Morgan, set the interest rate. My understanding, this is an interest rate that is negotiated when the account is opened. These accounts go all the way back to the late 1980s, I believe. And I also understand that the interest rate on these accounts is generally consistent with what is paid for similar accounts of this size.

THE COURT: Great. Thank you.

MR. GAZES: I have nothing more to add at this time, your Honor, unless you have any specific questions for me about the amended motion.

THE COURT: I do have some questions. But it may be it's best for me to wait until I've heard from the other interested parties, and then maybe some of those questions will be either elaborated upon or they will be fine-tuned.

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1 You said there is four other investors who are
2 similarly situated to Sayko?

3 MR. GAZES: That's correct, your Honor.

4 THE COURT: Who are they? Do you know off the top of
5 your head.

6 MR. GAZES: That would be Michael Walsh; Robin Sayko,
7 who we discussed; Donald and Marilyn Walsh; and Patricia
8 Cabero.

9 We never found an instrument for Rhodes, your Honor,
10 and so the conversion seems to have been taken place by
11 Amerindo. The claimants, from what I understand, did not even
12 consent or know there was going to be a conversion into a GFRDA
13 supposed investment vehicle.

14 THE COURT: We have Ms. Cates and Ms. Jordan have made
15 submissions here. There is an issue as to whether they should
16 also be treated like the rest of the investors or whether they
17 are different because they are not, at least for some of the
18 investments, technically GFRDA or AGTF.

19 MR. GAZES: Those are some of the issues that are
20 before you. The ATGF creditors wish you to treat the interim
21 distribution in a way that it satisfies them and the GFRDA
22 wishes to treat it differently.

23 My Pooley method, which I thought was the fairest and
24 most equitable method, was to look at the last statement of the
25 ATGF statements, or the initial investment, whichever I had,

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1 and attribute a value to that based on the statements and
2 dollar amount. And the GFRDA was to use the latest statement
3 showing accrued interest to that date and treat the interim
4 distribution based on the amount reflected in that statement.

5 THE COURT: Ms. Cates is a \$5 million investment, at
6 least one of them came out at trial, related to something
7 different all together. And so she is not part of the
8 calculation at all for that, right?

9 MR. GAZES: No. That would be incorrect. Ms. Cates
10 was given value for the SBIC investment, I believe, is what you
11 are referring to. As long as the claimant demonstrated money
12 that was turned over to Amerindo, we gave the claimant a basis
13 for a claim.

14 THE COURT: That's my question. That's what I want to
15 make sure, and Jordan as well.

16 MR. GAZES: That's correct, your Honor.

17 THE COURT: I may disagree with the calculation or
18 which of the methods that has been set forth, but they are a
19 part of your calculation.

20 MR. GAZES: Absolutely.

21 THE COURT: And then I want to ask you at some point
22 about the risk of overpaying. There is a dispute, obviously,
23 with these two valuation methods that are proposed and
24 identified in your two motions. Have consequences, at least
25 they look like they would have consequences to the long-term or

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1 to the final distribution.

2 This is really about the interim distribution. And so
3 is there a concern that by adopting one over the other we would
4 be paying out more to certain investors than would be
5 appropriate at the end of the day if we then did a different
6 calculation? Mr. Marcus has sort of laid out his view as to
7 what we ought to be doing with what's left over. If there is a
8 surplus, then who gets it?

9 MR. GAZES: I can only give you a conjecture on how I
10 would deal with the surplus. It seems to me that the claimants
11 would be entitled to the surplus for certain.

12 THE COURT: Which claimants?

13 MR. GAZES: All the claimants. Each one of the
14 investors would be entitled to share in the surplus. How we
15 calculate how that surplus distribution would mean that we have
16 paid them back their investment. So no particular credit would
17 be harmed by the interim distribution because it's really only
18 their investment amount based on their latest statements that
19 they are being paid now, so I don't believe that there would be
20 a prejudice to them.

21 THE COURT: I think some of the other speakers are
22 probably going to address that again. Maybe I'll have you come
23 back and respond specifically to points that are raised today
24 that are new or different from what's in their written
25 submissions.

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1 Has there been any attempt to calculate what Amerindo
2 would have kept as its fees on these things?

3 MR. GAZES: There has not, your Honor.

4 THE COURT: Thank you.

5 Did SEC want to be heard now?

6 MR. JACOBSON: Yes, your Honor, very quickly.

7 THE COURT: I'll do the parties and then I'll do the
8 claimants and the investors. I am going to give everybody sort
9 of a tight time leash because I don't want this to go on into
10 the wee hours. Five minutes should be enough?

11 MR. JACOBSON: One minute. I'm just here to let the
12 Court know the Securities and Exchange Commission completely
13 supports the receiver's plan as it was modified. We believe
14 that due to the vast commingling, the use of the fund by
15 Mr. Vilar and Mr. Tanaka interchangeably, they took funds from
16 certain investment vehicles, paid other investors with those
17 monies. We don't think there is any way to really disentangle
18 the finances of these companies, and we believe that the best
19 method, the fairest method of distribution is in fact what the
20 receiver has proposed and what we put in our papers, which is
21 trying to figure out to the best ability to find out what the
22 net claim was or the net investment was for the interim
23 distribution. And we believe at this point that is the fairest
24 way to make the distribution. So we do support the receiver's
25 plan.

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1 THE COURT: Thank you.

2 Ms. Shevitz, if you're more comfortable sitting, bring
3 a microphone close. Why don't we do that.

4 MS. SHEVITZ: I would like an opportunity to speak
5 after the other people speak, too.

6 THE COURT: Maybe. I am not sure. Unless you want to
7 wait until they are done. I am not giving everybody two
8 innings.

9 MS. SHEVITZ: We are parties here. Outsiders are
10 speaking and I would like an opportunity to respond to them.
11 Now we have a new valuation and new thing that I have not even
12 seen yet that he is proposing. I have not seen any of this.

13 THE COURT: I'm not guaranteeing you that I'm going to
14 give you a chance to respond to everybody. If you want to wait
15 until everybody else has gone, we can do it that way.

16 MS. SHEVITZ: I would like to say something now. I
17 may ask again for an opportunity to respond to other people who
18 are saying different things about these claims here.

19 THE COURT: You can sit, if you want to sit. Keep the
20 microphone close so we can hear you.

21 MS. SHEVITZ: Mr. Gaze said that he spoke to everybody
22 and that's how he developed his numbers. He did not speak to
23 us. He did not look at the record.

24 On February 21, 2012, you and Judge Swain signed an
25 order that told the government to come up with the most recent

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1 account balances based on the relevant account statement and
2 other information based on the investments. These were not
3 vastly commingled. The mutual fund was commingled. Yes.
4 That's how mutual funds are operated.

5 The GFRDAs were also commingled, as is proper in
6 Panama. There was nothing commingled with the U.S. entity at
7 all. That was all totally separate. And in 2005, 12/2005, the
8 SEC monitor gave the U.S. Amerindo a total clean bill of
9 health. There was zero commingled between the U.S. and the
10 Panama operation, zero.

11 On February 12, you and Judge Swain told the SEC and
12 the prosecutors to submit the value of substitute assets. This
13 is February 2012, document 512. This happens to be in the
14 criminal case, but it was the two captions. Specifying the
15 account balances, the account statements.

16 Mr. Gazes and the SEC take the position now that the
17 papers are in disarray. They are not. They didn't look at
18 them. The only thing that happened was there was some
19 irregular account statements, but the Amerindo Panama accounts
20 were kept perfectly validly.

21 After this order, Sharon Levin looked at them, as did
22 Marc Litt, in document 418-2, also filed as 514-5. These
23 contained account statements and other information about the
24 claims, as well as the assets at that time. Mr. Litt was able
25 to do that. The documents are not in disarray. They just were

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1 disregarded. The government has disregarded every single order
2 by this court, by Judge Swain, that says give me the accounts
3 and the account statements. They are not in disarray. They
4 were some of these statements that went to the clients were
5 irregular, but the larger clients got theirs, their statements,
6 and there is nothing in disarray. The commingling doesn't stop
7 a valid -- I'm sorry. I'm a little Percoceted up.

8 THE COURT: You can sit, if you want.

9 MS. SHEVITZ: I don't know if that's going to get my
10 words back.

11 The fact of the records. One of the things that
12 Mr. Gazes said is everyone is similarly treated. No.
13 Everyone's account was kept according to an account that is
14 maintained, was maintained, and it is in the search records
15 that Sharon Levin told Judge Swain on 9/23/2011, the transcript
16 is I believe document 168. I don't know. I cited it in my
17 papers. All of the documents are there. Judge Swain said come
18 up with those. And the government and the SEC -- the SEC has
19 repeatedly failed to comply with these repeated orders of the
20 Court. There is nothing inascertainable about it. Not
21 everyone was similarly treated. Everybody was treated
22 according to their account and their particular vehicle and
23 their particular deal with Amerindo with an account interest
24 amount that was negotiated. It dropped when the market rate
25 dropped. They were all respected. Mr. Heitkonig, for

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1 instance, started out with 13 percent and by the time of the
2 2005, interest rates had dropped, but it's on his account
3 statement, which I've attached in our papers. Everything is
4 accounted for. They just didn't look at it. It is there.

5 The government, Sharon Levin, told Judge Swain on
6 9/23/11, we have the records there. We have them pursuant to
7 the search. The government maintains the Amerindo Panama
8 records and if someone would look at them, they are not in
9 disarray, and they were told to provide those. Now they want
10 to come up with some different evaluation that keeps changing,
11 and I don't know quite how to do it. The investors were not
12 treated similarly. They were treated in accordance with their
13 own investments.

14 JP Morgan. I don't know if it's a matter of contract,
15 they say, this paying interest. Well, the funds should have
16 been swept into a money market fund. That was the deal with JP
17 Morgan. It just happened after they, the SEC, put them out of
18 business and took their ability to direct JP Morgan away. JP
19 Morgan did whatever it wanted. Now nobody even knows if it's a
20 matter of contract, but they want to collect fees on that.
21 There is something not fair here.

22 When Rhodes finished, the investors knew that if they
23 wanted to keep their money in Amerindo it was going to be in a
24 different -- they called it vehicle. Lily Cates, who was
25 dyslexic, didn't know how to call everything a different

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1 vehicle, so she kept calling her account Rhodes. But it really
2 is what it is for everybody. It is on the records, it is
3 validly treated, it is there. It's not unascertainable. It's
4 totally ascertainable. Not only that, all the money we find
5 now is there and there were really no losses based on the 2005
6 account statements.

7 Now, eight years later, nine years later, when the
8 government has refused to come up with the account statements
9 before, and still refuses to, as if it's not their job. But,
10 your Honor, you signed something, a document telling them to do
11 that, on February 5, 2012, as did Judge Swain. This has never
12 been complied with.

13 If there is a surplus, what do we do about it? If
14 there is a surplus, my clients are the claimants as well.
15 After they validly pay the claims based on the May 25 account,
16 which are ascertainable, all you have to do is look at and
17 update the account statements which were there and which relied
18 on by Sharon Levin and by Marc Litt in the two documents I
19 mentioned, 514-5, 221, after your Honor did sign this order,
20 that's what they came up with, Sharon Levin did.

21 THE COURT: What did she come up with?

22 MS. SHEVITZ: She came up with a listing of documents
23 at document 514 of accounts, of amounts, of what they knew then
24 subject to verification. In 514-5, right after your Honor and
25 Judge Swain issued this order. They came up with amounts.

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1 They came up with the account statements that they had. It was
2 subject to whatever verification was going to be and nobody
3 continued verifying it.

4 THE COURT: You're repeating this over and over. You
5 were about to say that your clients are entitled to everything
6 that's left over?

7 MS. SHEVITZ: The position they have taken since the
8 beginning and to now is they want the clients paid back on the
9 May 25 account as of the last date they were able to manage the
10 money. Since then, nothing has earned interest.

11 THE COURT: Why would it go to your clients? I don't
12 understand that, if there are shares in the ATGF account.

13 MS. SHEVITZ: After the ATGF was not able to be
14 managed, the defendants had a fee interest in that. It doesn't
15 go on when it's not managed. They were able to manage this.
16 For instance, the UK pension -- right now, since 2005, this
17 money, there has been cash sitting in these accounts.
18 Nobody --

19 THE COURT: That's not clear to me why that makes it
20 your client's money. I don't understand how you make that
21 point several times in your papers. Somehow, you are arguing
22 that your clients are the owners of what's in the ATGF account.

23 MS. SHEVITZ: It's not an ATGF account. The names of
24 the bank account are different than the names of the
25 investments. The names of the bank accounts are -- one of them

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1 is called ATGF, Inc., one of them is called ATGF 2. They are
2 not the investment vehicles. They are the names of bank
3 accounts.

4 THE COURT: What makes your clients the owners?

5 MS. SHEVITZ: They are the owners of the bank accounts
6 because they are the account owners through another corporation
7 of the accounts at JP Morgan. They have a fee interest which
8 was not taken out. Their fees were not taken out for years.
9 So their fees have been an investment in the account. Their
10 fee interest has been stayed there.

11 Mr. Tanaka hasn't taken a salary since 2002. While
12 everybody else's accounts, money, was in these accounts, so was
13 theirs. They want to pay the investors as of the May 25, 2005
14 last date they could manage. Since then, the interest has been
15 stopped. Since then, JP Morgan has refused to take any
16 direction from them. So their fee interest remains in there as
17 claimants, the same as everybody else. And in Mr. Canute's
18 report, the monitor who found Amerindo U.S. squeaky clean in
19 December 2005, he resigned. He said he wanted to resign then.
20 He told Judge Swain he should get discharged and any money left
21 over should go to the owners. That's what happens with these.

22 If they were able to manage this account, like before
23 things were shut down in 2005, at least the UK pension, they
24 had selected stocks in the UK pension as opposed to leaving
25 cash there. And the stocks have appreciated 332 percent since

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1 2010. Because they were somewhat managed, not actively
2 managed. When the government shut this down in 2005, JP Morgan
3 stopped paying interest, JP Morgan refused to take any
4 direction. The SEC --

5 THE COURT: That's not what JP Morgan is saying. They
6 are saying they are paying interest up to 2008.

7 MS. SHEVITZ: It was not any negotiated interest.
8 They wouldn't listen. They wouldn't talk to the owners of the
9 fund. The SEC --

10 THE COURT: The owners of the fund being whom, your
11 client?

12 MS. SHEVITZ: Yes. JP Morgan did not take -- this
13 could have been a negotiated amount. And what should have
14 happened is the cash should have been swept into a money market
15 account which would then -- which is what the normal -- that's
16 what happened before. But on day one Mr. Tanaka was told he
17 couldn't give them any direction. Mr. Salzberg was there from
18 day one sitting in their office during the search and so
19 nothing was able to be managed or appreciated. So everybody's
20 money has been stifled there when it could have earned 330
21 percent.

22 THE COURT: Again, it's still not clear to me why
23 you're asserting that your clients are the owners --

24 MS. SHEVITZ: Because, Judge, Amerindo management is
25 the account owner of those accounts. That is a corporation

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1 owned by the defendants. And, as such, and especially now that
2 the forfeiture order is vacated, it belongs to them.

3 THE COURT: I don't want to do this anymore because I
4 keep asking why you think it belongs to them and you said
5 because it belongs to them. You have a minute, wrap it up
6 because you are not the only one who wants to speak today.
7 Anything else would you like to say with respect to the
8 receiver's motion regarding the interim --

9 MS. SHEVITZ: I still don't know what he wants to do
10 now. I have not seen any new thing with Rhodes. It's very
11 hard for me to respond. It's hard for me to respond to
12 shifting motions. I think Mr. Heitkonig said it well the other
13 day, I don't know whose side he's on. In our papers, too, we
14 cite Eberhard v. Marcu. A receiver stands in the shoes of the
15 entity of which he's receiver. And Eberhard v. Marcu --

16 THE COURT: I'm familiar with the case.

17 MS. SHEVITZ: And Mr. Gazes, if he is the receiver of
18 those funds, should have been seeking interest, should have
19 been telling JP Morgan, sweep it into a money market fund. He
20 is standing in there to maximize --

21 THE COURT: That's not really addressing what you're
22 arguing for --

23 MS. SHEVITZ: My argument is that before the
24 restraining order and before the forfeiture order, these were
25 the account holders, Amerindo management owned by these two

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1 individuals.

2 Now, there is no forfeiture order and the property is
3 reverted. Property ownership is the right to manage. They
4 have been deprived of that right and they are still deprived of
5 that right. And one of the things I wanted to suggest, after
6 an interim distribution, which we are very close to, I think.
7 We agree, for the most part, based on the receiver's first
8 report, except for made-up MAVs, which I have addressed, and
9 interest rates which seem to have extended into perpetuity,
10 which they don't because they were one-year GFRDA fixed-deposit
11 vehicles. That is also in our papers and it is in the records,
12 the Amerindo Panama records which Marc Litt and Sharon Levin
13 are able to access.

14 THE COURT: Anything else you would like to say with
15 respect to the proposed interim distribution?

16 MS. SHEVITZ: Yes. There is some investors that we
17 had on our list, if you recall, in July 2012. We made a list.
18 I think it was 2012. And it was based on Sharon Levin's list
19 because we don't have the records. But based on Sharon Levin's
20 list, we included some investors in this list which Mr. Gazes
21 does not seem to have accounted for on his listing at all.
22 Some of them have recently contacted me. I don't want to leave
23 them out in the cold. On the other hand, it's hard to --

24 THE COURT: Notice has been given.

25 MS. SHEVITZ: I don't think they got it. That's the

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1 problem. And now Mr. Gazes is allowing other claims in, after
2 the fact. And it's not a fair process --

3 THE COURT: You are asking for additional people to be
4 included. Is that what you are asking? I am not sure I'm
5 following.

6 MS. SHEVITZ: I'm asking for, after there is a process
7 to go through the Amerindo Panama accounts, I think there
8 should be a review of this. We are willing to pay an interim
9 payment. Yes, we are willing to do that, but not based on
10 amounts that don't exist in the records. These are not
11 unascertainable, Judge.

12 THE COURT: You have made that point. I want to hit
13 any points --

14 MS. SHEVITZ: There are some additional investors that
15 may be entitled to something and there is some investors that
16 Mr. Gazes has seemingly accepted. For instance, Mr. Charles,
17 who we say is a bogus investor who doesn't have a claim.
18 Mr. Gazes has allowed his claim.

19 THE COURT: I have seen that.

20 MS. SHEVITZ: There is also some other people,
21 Mr. Sweetland, who we don't really know, but he doesn't even
22 have an affidavit. There is some people who don't have
23 affidavits. It seems arbitrary and capricious. And without
24 having a basis in the Amerindo records, which exist and Sharon
25 Levin told Judge Swain, are there in her custody, and should be

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1 examined, as you said, on February 12. I don't know how to
2 respond.

3 THE COURT: I want to hear from the others who were
4 here today. Let's start with JP Morgan Chase.

5 Come up to the lecturn and use the microphone. Thank
6 you, Ms. Likwornik Weiss.

7 MS. LIKWORNIK WEISS: Thank you, your Honor.

8 Your Honor, JP Morgan has a contractual lien on these
9 four accounts for payment of its fees and expenses and has made
10 that claim. Three separate groups of parties have objected:
11 Vilar and Tanaka, the Mayers, and Mr. Marcus.

12 And I will start by saying they have no grounds to
13 object. This is a contractual claim and they are not parties
14 to the contract. Despite what Ms. Shevitz says, her clients do
15 not own these accounts. These accounts are in corporate names.
16 They are controlled by the receiver. The receiver has not
17 objected to JP Morgan's request for payment under the contract.
18 In fact, he recommends it. And for that reason alone, the
19 Court should just direct that it be paid.

20 The interest claim has been amply addressed, and I
21 would just like to address the points that Ms. Shevitz made in
22 her papers and a little bit today regarding JP Morgan.

23 With respect to holding the money and not giving her
24 clients access to it in 2005, there was a default under all of
25 these agreements, which you would see if you read them. And

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1 she would see if you read them.

2 The SEC came in and claimed securities frauds. The
3 defendants Vilar and Tanaka were arrested. JP Morgan had broad
4 and ample remedies at that point to prevent itself from the
5 risk that those actions imposed. They could have shut the
6 accounts down completely. They were completely within their
7 rights to not allow these defendants any access to it and that
8 is what they did.

9 With respect to her claim that JP Morgan has not
10 managed the accounts, JP Morgan's job here was not to manage
11 the accounts. It was a prime broker. It provided clearing
12 functions. It provided financing functions. It provided
13 services to fund managers. It was not JP Morgan's job to
14 decide how to manage the funds.

15 In her papers Ms. Shevitz claimed that JP Morgan is
16 estopped from seeking funds in this account because it filed an
17 interpleader which it disclaimed them. As is obvious, your
18 Honor, we claimed the attorneys fees and costs in the
19 interpleader. We sought to get rid of these accounts through
20 the interpleader and disclaimed only for that purpose, but
21 disclaimed interest in the accounts while claiming our fees.
22 What happened instead was that the Court directed us to hold
23 them and to have the money pass through the forfeiture
24 proceedings, so nothing has been waived.

25 In addition to the claims that Mr. Gazes has

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1 submitted, legal fees continue to accrue. The last submission
2 puts them up to about \$140,000. They continue to accrue today.
3 We would very much like to have them stop continue accruing,
4 but we would ask the Court to direct Mr. Gazes to pay what is
5 owed for legal fees and costs.

6 And, of course, lastly, the ongoing custodial fees are
7 a separate application, not really part of this proceeding, but
8 JP Morgan is now the custodian, is honoring Mr. Gazes' requests
9 on a very frequent basis, and that custodial fee should
10 separately be paid.

11 Unless the Court has any questions, I have nothing
12 further.

13 THE COURT: That's fine. Thank you very much.

14 MS. SHEVITZ: I do have --

15 THE COURT: No.

16 MS. SHEVITZ: I am not going to be able to respond at
17 all?

18 THE COURT: You have to understand, this is a
19 recurring problem. You seem to think you run this courtroom
20 and that you speak at will and that you speak as long as you'd
21 like even if it's just to repeat all points that you have made
22 before. No. Stop. Enough. I think I've been very patient.
23 But you constantly speak over me. You constantly interrupt me.
24 You show so little respect for the Court that it's something
25 I'm not used to and I'm not going to tolerate much longer. So

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1 stop.

2 We are next going to hear from the Mayer's
3 representative, Mr. Begos.

4 MR. BEGOS: Thank you, your Honor. I can tell you I'm
5 very glad that we are here talking about any distribution of
6 money. It's been such a long time since we thought money was
7 going to be first distributed, and I'm glad we are finally at
8 the cusp of a distribution.

9 There is a couple of points that I just want to make
10 based on what was said so far today before I turn to the
11 specifics of the Mayers' objections.

12 There has been a discussion of paying up until May
13 2005. As Ms. Shevitz has used that date, I know Mr. Gazes has
14 used it for purposes of valuation for an interim distribution,
15 and I don't think the Court understands it this way. But I
16 just want to make sure it's on the record.

17 Obviously, all of the claimants are entitled to be
18 paid up until the present. The fact that Mr. Vilar and
19 Mr. Tanaka were arrested and then convicted doesn't mean that
20 the debts no longer continue to accrue interest or continue to
21 accrue growth. So to the extent there is money left over, to
22 the extent that there is extra money, quote unquote extra money
23 lying around, obviously, all of the claimants should be paid
24 100 cents on the dollar, including whatever interest they are
25 owed, including whatever growth they are entitled to.

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1 The Mayers' objections really fall into a couple of
2 parts. I think to a certain extent, to a great extent, the
3 Mayers contend that they are really unique among the creditors,
4 and that relates to the judgments that they have. I think the
5 most important, the most significant objection we have here is
6 that the receiver cannot recalculate the amounts that the
7 Mayers have been found to be owed pursuant to their judgments.

8 THE COURT: You are owed that by the defendants in
9 those cases, in the civil cases in the state. But the funds at
10 issue here are not the same.

11 So you have a judgment against Mr. Vilar and
12 Mr. Tanaka, certainly. And to the extent that they have any
13 money coming to them at the end of this process, I guess you
14 get dibs on it, unless there are others who also have claims
15 against them personally. But I think this was a point that was
16 made by Mr. Gazes in his reply, and I am not sure what your
17 response to that would be.

18 MR. BEGOS: Couple of responses. We also have a
19 judgment against Amerindo Investment Advisors, both the
20 American and the Panama entity.

21 But the primary response is to look at the very
22 appointment of Mr. Gazes to begin with. He was appointed in
23 this case to take control of the assets that were subject to
24 the forfeiture order. The assets that were subject to the
25 forfeiture order on the criminal action were made subject to a

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1 forfeiture order because the government submitted to your Honor
2 evidence that that was property belonging to Vilar and Tanaka.
3 That was the only basis that the Court had to make those
4 substitute assets subject to the forfeiture order.

5 And I would point specifically in United States motion
6 to amend the order of forfeiture to include substitute assets,
7 this is document 444 from May of 2010. The government asks
8 that the forfeiture be amended, quote, to include certain
9 property of defendants Alberto William Vilar and Gary Alan
10 Tanaka as substitute property. And it listed specifically the
11 accounts that are at issue here today.

12 The Court then issued an order of substitute assets,
13 that's document number 463, November 9, 2010, and included in
14 that order a whereas clause: Whereas the government has
15 identified the following assets as property of the defendants,
16 and listed the accounts, and all of the other property that was
17 turned over. Then the Court entered orders forfeiting that
18 property.

19 THE COURT: The property belongs to a lot of people
20 who are in this room, not just the Mayers. The fact that the
21 Mayers have a judgment against the defendants doesn't mean that
22 the property belongs to the defendants.

23 MR. BEGOS: What I said, your Honor, is that the
24 government's motion for substitute assets and the Court's order
25 of substitute assets were both based, as it had to be, on the

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1 finding that the property at issue belonged to the defendants.
2 The statute, it's 21 U.S.C. 853, allows for forfeiture of
3 substitute property and states that the Court shall order the
4 forfeiture of any other property of the defendant, so the only
5 basis the Court had for entering an order of substitute assets
6 in the criminal action.

7 THE COURT: This is not the criminal action. We are
8 not here for the criminal action.

9 MR. BEGOS: I understand that, your Honor, but that's
10 the predicate for the receivership. When the Court appointed
11 Mr. Gazes initially to take possession of the fund, the Court
12 identified the funds as the funds that were subject to the
13 forfeiture in the criminal action. And then we go to the
14 Court's order giving Mr. Gazes more control, which was the
15 summary judgment decision. The summary judgment decision is
16 only against Vilar and Tanaka. The Court has issued no order
17 against ATGF 1, ATGF 2, AMI, and any of the other entities that
18 were codefendants in this action.

19 Although the Court's orders in this action don't
20 specifically say, I hereby appoint Ian Gazes as receiver for
21 Vilar and Tanaka, I think when you look at all of the
22 decisions, when you look at the language of all of the
23 decisions, it's clear that Mr. Gazes has been appointed as
24 receiver or Vilar and Tanaka.

25 THE COURT: I think you should move on to your next

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1 point, because I don't think you are going to get too far on
2 that one.

3 MR. BEGOS: Very well, your Honor. I will subsume the
4 argument about the judgment lien in that as well.

5 I think the next primary argument relates to the
6 difference between the victims, who are primarily GFRDA
7 investors, although Ms. Lily Cates as well, who we didn't
8 specifically address because her investments are different than
9 anybody else's, versus the ATGF investors. We have spelled
10 this out in your brief. It so happens that on various points
11 one of the primary ATGF investors, Mr. Marcus, agrees with our
12 position that there is a distinction between the GFRDA
13 investors/victims and the ATGF investors.

14 THE COURT: You don't think the ATGF investors are
15 victims in any sense?

16 MR. BEGOS: They have not been established to be
17 victim. There was no finding that there was any fraud
18 committed against them, certainly not in the criminal action
19 and not in this action. Right now they are investors. They
20 certainly have lost money, but they have not been found by
21 anybody to be victims. The SEC, in response to our
22 objection --

23 THE COURT: I don't know what it means to be found as
24 a victim, but, again, this is a civil case. This is an SEC
25 case.

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1 MR. BEGOS: I misspoke. They have not found to have
2 been victims of fraud, your Honor. The SEC has not established
3 that the ATGF investors were defrauded. The summary judgment
4 motion related only to what the Court referred to as the
5 testifying victims in the criminal trial, which was primarily a
6 subset of the GFRDA investors.

7 THE COURT: This is the SEC action. What we have is
8 the receiver's report, which indicates that assets were
9 commingled, and that some of those assets were used for
10 purposes completely unrelated to the investments, for personal
11 purposes. It also seems that some of those commingled assets,
12 which is in the name of the ATGF investment vehicle, were used
13 to pay people who were GFRDA investors. It would seem that the
14 folks who invested in ATGF probably didn't know that their
15 investments and the assets that were bought with those
16 investments were going to be used to pay off other investors
17 who were apparently in a different fund.

18 MR. BEGOS: That very well may be, and I'm not
19 suggesting that they can't prove or the SEC can't prove that
20 ATGF investors were defrauded or were misled.

21 Part of the point of our objection is, nobody has
22 proved it yet. When you look at all of the cases regarding
23 distribution in receiverships and evaluating whether people are
24 similarly situated, it looks at whether victims of the fraud
25 are similarly situated.

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1 The remainder of the point relates to at what level of
2 specificity does the Court determine that investor groups are
3 similarly situated or not, putting the victim of fraud issue
4 aside.

5 The SEC and Mr. Gazes have taken the position that
6 initially Mr. Gazes took the position that ATGF and GFRDA
7 investors were different.

8 THE COURT: I think on the basis they have different
9 expectations.

10 MR. BEGOS: Correct. And we support that. And the
11 amended motion walked that back and treated everybody the same.

12 Our view is, what the SEC is suggesting is all the
13 Court needs to look at is, are they victims of fraud and was
14 money commingled. And our view is, under the Second Circuit
15 case law, there are other factors that the Court can and should
16 consider. Granted, the Court has broad discretion here and
17 virtually whatever the Court does with respect to determining
18 whether people are similarly situated would be affirmed if
19 anybody appealed it.

20 But when the Court looks at the cases that we cited,
21 there are other factors that I think the Court should consider
22 above and beyond just were they both victims of fraud and was
23 money commingled. Like the relationship. Were they similarity
24 situated in relationship to the fraud. Was the treatment of
25 both groups the same. Were they both looking for the same

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1 thing. Were they similarly situated in relationship to the
2 fraudsters. And were they similarity situated in relationship
3 to the nature of the investments. When you look at the GFRDA
4 investments versus the ATGF investments, they were just very
5 different vehicles. The GFRDA investments were much more like
6 lenders. They had what were effectively certificates of
7 deposit as if you went to a bank, you gave them money, you were
8 earning a stated interest rate for a stated period of time,
9 then it would mature and you would get your money back. ATGF
10 investors were looking for speculation. That's what they
11 wanted. That's what they got.

12 The documents, when you look at the claims, the
13 documents show tremendous volatility in those accounts. We
14 submit that those differences merit different treatment between
15 the ATGF and the GFRDA investors.

16 THE COURT: This is for the interim distribution. And
17 so does it matter for the interim distribution if we can try a
18 different valuation once everything has been accounted for and
19 liquidated?

20 MR. BEGOS: Your Honor, I certainly support getting
21 money to people sooner rather than later, and I am certainly
22 not going to suggest to you that the Court should spend weeks
23 and weeks and months evaluating these claims before any money
24 gets distributed. And I think my sense of this is, the Court
25 wants to get this interim distribution made as soon as

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1 possible. If it's clear that this is merely an interim
2 distribution, that any calculation that's done now has no
3 effect on what the final calculations are, what the final
4 priorities are, and if, as I suspect is the case, we think that
5 there is going to be enough money left over to address any
6 inequalities that have arisen in the interim distribution, as I
7 think your Honor has already floated that issue, if, I believe,
8 Mr. Gazes has said there may be -- I could be misquoting him.
9 He said there could be tens of millions of dollars in value in
10 these private securities.

11 If there is enough there to rectify any problems in
12 valuation, I think that the Court may very well, in its
13 discretion, say, I am not going to look at the priority issue
14 now. I am not going to take a fine tooth comb and look at the
15 valuation issues now. I am going to get money out. I do still
16 think and I know your Honor disagrees with me on that, I do
17 still think that the Mayers' judgment needs to be given full
18 faith and credit here and that their claim should be valued at
19 the amount of their judgment.

20 With respect to --

21 THE COURT: Wrap it up because there is a lot of other
22 people.

23 MR. BEGOS: With respect to JP Morgan, we did object
24 to their claim to the extent they were asking for fees and
25 expenses because, in our view, they had to pay interest. I'll

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1 accept the representation of Ms. Weiss that interest was
2 credited pursuant to the agreements and so I don't press that
3 particular objection anymore. I do point out, though, that to
4 the extent JP Morgan says they have a lien and they deserve a
5 priority, the Mayers also contend they have a lien and they
6 deserve a priority as well.

7 THE COURT: The problem is, nothing is going to be
8 paid out if they still have the money.

9 MR. BEGOS: Your Honor, I think, as I said, the Court
10 has broad discretion here and probably even more, given that we
11 are talking about an interim distribution. I don't want to
12 stand in the way of getting money out to the Mayers or anybody
13 else on a quick basis.

14 Unless the Court has more questions for me.

15 THE COURT: No, I don't. Thank you very much,
16 Mr. Begos.

17 Next I would like to hear from Mr. Marcus or his
18 counsel.

19 Mr. Friedman.

20 MR. FRIEDMAN: Thank you and good afternoon again,
21 your Honor.

22 It is true that we are talking about an interim
23 distribution and it is true that regardless of what your Honor
24 does with respect to the interim distribution, you can change
25 it later.

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1 But I think that the interim distribution is going to
2 establish a pattern for what happens here. And, more
3 significantly, I think you can get it right without any
4 complicating factors. I don't think this is as difficult as
5 some of the other speakers have indicated. I think that the
6 receiver and the SEC have thrown up their hands. The receiver
7 and the SEC start from the premises that because the money was
8 commingled, everybody is similarly situated. And I don't think
9 there is any basis for that conclusion, either in fact or in
10 law. I think the starting point has to be, what did these
11 claimants invest in? And as several people have said, and it's
12 really not in dispute, there are two completely different kind
13 of investments here. GFRDA, as Mr. Begos just said, was a
14 fixed income investment, akin to a certificate of deposit.

15 THE COURT: I wouldn't waste your time on that. I
16 know the difference between the two.

17 MR. FRIEDMAN: ATGF, by contrast, was a mutual fund.
18 It was an equity mutual fund. My clients bought shares in
19 ATGF. ATGF, in turn, because the securities. Those securities
20 could go up, those securities could go down. If they go up,
21 the ATGF investors or the ATGF shareholders make money, just
22 like the investors in any --

23 THE COURT: I get all that, believe me. This is all
24 very salient if there is money left over. But if there is not,
25 assume that there is only 50 cents on the dollar, and

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1 ultimately we don't know, but it could make a difference,
2 right?

3 MR. FRIEDMAN: It could make a difference, but it
4 depends, your Honor, on what money leftover means. The way we
5 propose, and this is set forth in detail in paragraph 32 of our
6 original papers, and I take your Honor through the steps. And
7 I would like to summarize --

8 THE COURT: I've read it. You don't have to reinvent
9 the wheel. Go ahead.

10 MR. FRIEDMAN: Let me give you the 30,000-foot
11 summary. The 30,000-foot summary is figure out what the GFRDA
12 people are owed, which is a combination of principal and
13 interest, figure out what is available. One has to make an
14 assumption, because not all of the money is corralled yet by
15 Mr. Gazes, and I will return to that issue in a second if your
16 Honor will bear with me.

17 But one can assume that there is going to be a total
18 of -- we know there are \$23 million now. Mr. Gazes has
19 represented to me -- represented is the wrong word. Mr. Gazes
20 has said to me in our conversations that he expects to recover
21 \$4 million from the Cayman Islands and approximately \$45
22 million from the sale of the publicly-traded but still
23 restricted securities once those restrictions are lifted.

24 If we assume that there is going to be a 70 or \$80
25 million total pot, and we know what belongs to the GFRDA

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1 people, which I suggest to your Honor will be somewhere between
2 15 and \$20 million. The remainder belongs to the ATGF
3 investors. And, therefore, one knows the ratio. Let me round
4 off the numbers. If \$20 million belongs to the GFRDA investors
5 and the total is 80, meaning 60 million belongs to ATGF, then
6 the ratio of any distribution should be in the ratio of 25
7 percent, 20 over 80, to 75 percent.

8 And I respectfully submit, your Honor, that's the fair
9 way to do the interim distribution. Obviously, there can be a
10 true-up at the end, but I just want to emphasize as strongly as
11 I possibly can that if the receiver's proposal, second
12 proposal, amended proposal, is adopted by this Court for the
13 interim distribution, the only way to do that is to completely
14 ignore the difference between the two kinds of investment. And
15 what the receiver would be doing is taking those GFRDA
16 investors who are only entitled to principal and interest and
17 giving them the upside of the equity investments made in ATGF
18 because that's what happens if you treat everybody pro rata.

19 The receiver so far is treating everybody pro rata.
20 That could change, but I respectfully submit, it is going to
21 change if your Honor indicates that that's the right way to do
22 it, as I believe you should indicate, even though this is only
23 an interim distribution, because it's really much more than
24 that.

25 With regard to the Mayers, I don't intend to say much.

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1 It's in our papers. As your Honor knows, if you have reviewed
2 the papers, we do not believe they are entitled to priority.
3 We do not believe they get to jump to the front of the line.
4 The relevant case law which we cite in paragraph 20 of our
5 submission gives your Honor broad discretion to do fairness in
6 this situation, and I respectfully submit that's what you
7 should do.

8 With regard to the claim that Messrs. Vilar and Tanaka
9 are somehow entitled to all of the appreciation since May of
10 2005, I don't think there is any basis for it. I think, in
11 fact, it is hard to take seriously. What they would be saying
12 is, once they shut down, once they were compelled to shut down
13 Amerindo, suddenly the assets of the investments became their
14 assets. It makes no sense.

15 Now, since May of 2005, the NASDAQ composite index,
16 which we believe is a fair surrogate for the nature of these
17 investments, has more than doubled. If your Honor thinks about
18 it, what they are really claiming is that 50 percent of the
19 value of the assets is theirs. And that's, as I said, very
20 hard to take seriously. If my clients had invested in ATGF and
21 the value of the ATGF securities went down, my clients and the
22 other ATGF investors would bear that loss. No GFRDA
23 fixed-income investor would say, I want to share in that loss,
24 but yet they want to share in the upside.

25 THE COURT: It's not clear that they want to share in

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1 the upside necessarily. We are really here for the interim
2 distribution. But I take your point. I understand the
3 difference between the two and the difference between their
4 expectations.

5 MR. FRIEDMAN: I want to turn to something that no one
6 has addressed and that's the work remaining to be done by the
7 receiver. As I mentioned a moment ago, Mr. Gazes told me that
8 there were about \$45 million in restricted securities and the
9 problem is they are very volatile securities. If they were
10 worth \$45 million when Mr. Gazes told that to me, they may be
11 worth less today. We know what happened to the market
12 yesterday with the reports from the Ukraine and China. There
13 certainly were less today than they were yesterday, and my
14 concern that those securities should be converted to cash as
15 quickly as possible.

16 And I don't really quite understand why that hasn't
17 been done yet and why it is taking so long to get those
18 restrictions lifted. I don't think it is that complicated to
19 get restrictions lifted, although my knowledge is less than
20 complete in that regard.

21 But what I would ask your Honor to consider is giving
22 the receiver whatever help he needs to get those restrictions
23 lifted. And very often an order from this Court has tremendous
24 persuasive power with transfer agents and other people who are
25 in control about whether restrictions get lifted, and we would

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1 all breathe more comfortably and have time for these
2 interesting debates if we had cash instead of \$45 million in
3 volatile securities.

4 So I would hope that your Honor aids Mr. Gazes in
5 converting those securities to cash and in recovering the \$4
6 million from the Cayman Islands, which, again, is taking a long
7 time, and I don't know why it's taking such a long time. I,
8 like everybody in this room, do not want to stand in the way of
9 an interim distribution, but, your Honor, I think you have to
10 look at the bigger picture in determining the way to do that.
11 Thank you.

12 THE COURT: Thank you very much, Mr. Friedman.

13 Let's hear from Mr. Swanson now.

14 MR. SWANSON: Thank you, your Honor. It was easier
15 being a witness than speaking here.

16 Very quickly on a few points. We do not believe in
17 any priority for the Mayers. We do not believe there should be
18 any priority at this time for any class of investors. If there
19 was to be a priority, Ms. Cates deserves it. She was the one
20 who had \$5 million outright stolen from her.

21 THE COURT: Why would that give her a priority?

22 MR. SWANSON: It doesn't. I don't think any investor
23 should have a priority. We do not believe that any excess
24 should go to Messrs. Vilar and Tanaka.

25 If some day we see in excess -- is convicted of fraud,

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1 we believe they should not get any benefits from what they did.

2 Sale of restricted securities should not be your
3 problem. That is something I know about, and I hope the
4 receiver will resolve that quickly.

5 We are fully in support of the receiver's motion and
6 the SEC's motion supporting it. We thought they were both very
7 well done with one exception. And the one exception is the
8 claim with respect by my client with respect to her mother.

9 First of all, we filed our requests in two parts.
10 Ms. Shevitz filed an objection to it. The receiver e-mailed to
11 me his intention to not support it based upon the documents at
12 this time. However, we would ask the Court to approve it for
13 the following reasons. First of all --

14 THE COURT: The it that you are referring to is --

15 MR. SWANSON: Anna Gladkoff, the mother.

16 First of all, as far as whether Lily would have
17 received those funds, if the Court cares, I have a copy of the
18 last will and testament of Anna Gladkoff, which I could deliver
19 today or file subsequently, which shows that Lily is the only
20 child and received everything. I don't think that's really an
21 issue.

22 We would ask the judge to permit the late filing and
23 consider the merits, either pro or con, despite the late
24 filing.

25 Lily first remembered it in mid February. We looked

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1 to see what documentation there was. We then filed a proof of
2 claim on February 27 which was received on February 28. It was
3 filed with the Court and it was filed with Mr. Gazes, and at
4 the request of the Court's clerk we subsequently filed it
5 electronically.

6 Ms. Cates had no memory of it until then. Her mother
7 died in 2002. This is 2014. Lily, as Ms. Shevitz points out,
8 referred to it in 2005 in her meeting with Mr. Litt,
9 Mr. Salzman, and others.

10 I hope I got the name right. What can I say. I'm
11 doing this without notes to go as quickly as possible and
12 didn't remember it since.

13 She subsequently went looking to see if there were
14 other documents. I'm trying to speak quickly to be fast, and
15 so I may slip things.

16 When we filed on February 27, received 28th, we
17 referred to a deposit with Amerindo in January of 2001. We
18 provided with that filing a handwritten note from Heather at
19 Amerindo. Ms. Shevitz pointed out in her objection that
20 Heather was a part-time clerk there. And Heather says: We
21 have received \$250,000 to invest in the name of Ms. Anna P.
22 Gladkoff, care of Lily Cates. Copies of statements will be
23 sent to her accountants, Bill Shine and Bob Carillo on a
24 quarterly basis, Heather, and it's on Amerindo stationery.

25 This certainly supports the \$250,000 that was

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1 delivered to Amerindo to January 2001 on behalf of Anna
2 Gladkoff. Lily subsequently found a cancelled check which we
3 delivered to the Court in March in our revised proof of claim.
4 That check, which the Court has a copy of, is made out, it's
5 from Anna Gladkoff, Lily Cates to Amerindo Investments and it
6 says in the memo at the bottom: Amerindo B2B mutual fund. And
7 on the backside it shows that it was deposited. There is
8 actually a reference to a People's Heritage Bank, which I
9 looked up and is in Maine. Ms. Cates does not have any
10 accounts in Maine and it was written out to Amerindo
11 Investments. So we have evidence that we have submitted of a
12 second deposit. Actually, it was the first one in November of
13 2000 of \$300,000. So the total is \$550,000.

14 Now, Ms. Shevitz's objection is that there was a
15 government note of a meeting on May 10 at which was attended
16 Marc Litt, Cindy Fraterrigo, Kay Lackey and Mark Salzberg of
17 the SEC. And in those notes it refers to the money being
18 transferred to Lily. I have my own notes which I had forgotten
19 about that at that meeting which are a bit more detailed. I'm
20 happy to submit copies to the Court now or subsequently. And
21 my notes refer to it. It goes on to say: First in mom's name,
22 then into L's, Lily's name, at suggestion of Cashmere, who is
23 the tax attorney for Lily and Lily's mother. Come separately,
24 every quarter, not part of Lily's account. That was the
25 testimony Lily gave in 2005 to Mr. Litt, Mr. Salzberg and

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1 others, was that it was in a separate account, came in a
2 separate statement.

3 Now, Lily doesn't remember any more if her name was on
4 it or not, but it was not part of her account. And, in fact,
5 Ms. Shevitz pointed out earlier today, if I can find my notes
6 quickly enough, that everything is accounted for. If you look
7 at the Amerindo statements for Lily Cates, there is nothing
8 reflecting a \$300,000 deposit for a B2B or any other account in
9 November 2000, and there is no indication in those statements
10 of a deposit in January of 2001 into Lily Cates' Amerindo
11 account.

12 Therefore, we believe that there is clear evidence
13 that Amerindo received two payments on behalf of Anna Gladkoff,
14 one in November for \$300,000, one in January of 2001 for
15 \$250,000. Lily, although she saved everything under the sun,
16 thousands of documents were turned over to the government in
17 2005. She does not have any statements that refer to her
18 mother.

19 Now, we believe that since she, and as Mr. Gazes said,
20 as long as the claimant gives evidence of payment to Amerindo,
21 we gave credit. Well, here is evidence of payments to
22 Amerindo, a total of \$550,000 to Amerindo. There is no
23 evidence of it going into Lily Cates's account, coming out of
24 an account to either Lily or Anna Gladkoff.

25 We believe until Amerindo or the receiver can find

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1 evidence which we cannot find that shows our money was
2 somewhere else, Lily, as the heir, sole heir of Anna Gladkoff,
3 should be entitled to a claim, an additional claim for
4 \$550,000. That is our only objection to the receiver's motion.
5 And I thank your Honor for your patience.

6 THE COURT: Thank you very much, Mr. Swanson.

7 Next, Ms. Colbath. You or Mr. Heitkonig wishes to
8 speak?

9 MS. COLBATH: Yes, your Honor. My client wishes to
10 address the Court directly.

11 THE COURT: Mr. Heitkonig, please come up.

12 MR. HEITKONIG: First of all, thank you very much,
13 your Honor, for allowing me to address the Court both verbally
14 and in the past through my written letters to you.

15 I am not going to repeat everything that I wrote in
16 the last letter. I think that's clear.

17 One of the first questions you asked the receiver was,
18 will the interim distribution affect the whole. And my worry
19 is that there are several dubious claims. Ms. Shevitz
20 mentioned the Charles claim. I believe I read that Soumendra
21 Khain was a friend of Charles. There was also an account
22 entitled National Investor Holdings, which was a Channel Island
23 company which was struck from the register I think in 2007.
24 Subsequently, another company claimed that the assets were
25 passed to them, but nothing in the claim that was submitted

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1 showed any evidence of that. And to add insult to injury,
2 that's an account that would be getting \$127 per share of an
3 ATGF account, when our proposed share price would be \$21. I
4 would be very happy with half of that, \$63. But that's really
5 a whole different play.

6 I really would like to cease accounts that had poor to
7 no documentation thoroughly analyzed before an interim
8 distribution. For example, the national investor holdings is,
9 I think, a Saudi Arabia company. Charles, for example, I think
10 he lives in Long Island. If it's found that he made a
11 fraudulent claim, I am sure he will be dealt with by the
12 justice system. But certain foreign companies, they would make
13 away with monies that should go to the whole.

14 I just wanted to also touch upon the ATGF custodian.
15 I don't understand why the custodian hasn't been investigated
16 or they must bear some guilt in this. At least if nothing
17 else, their record should bear some light on the accounting
18 situation. Ms. Shevitz did say this afternoon that the
19 accounts are not in disarray and if they were just looked at,
20 everyone would realize that. I would certainly favor that
21 funds be awarded or be made available out of our custodial fund
22 for the receiver to continue to investigate these funds. I
23 think that's very necessary. And pleased that anything that
24 looks fraudulent or iffy to be put aside before an interim
25 distribution is made. Because once that's done, if the account

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1 was fraudulent, this could be several million dollars that are
2 done that should be part of the whole.

3 There is one account in particular which I think
4 illustrates this point. There is a small account entitled
5 Imagineers Profit Sharing plan. And these were a very honest
6 and meticulous group. They had withdrawals in August and
7 December of 2004. They presented that as part of their claim,
8 which goes on to show that you have certain claims where the
9 documents were from 1999 or even prior to that, in 2000, so on
10 and so forth.

11 That's really the point. I thank you for allowing me
12 to come up here and that's really --

13 And, finally, I was saddened to hear that Dr. Mayer
14 has passed on. I just mention that as a human component to
15 this situation. I can't imagine what it's like for him to
16 leave us without knowing that his funds were safe. My mom is
17 elderly. I hope that doesn't happen to her.

18 Again, your Honor, thank you so much for allowing me
19 to address the Court.

20 THE COURT: Thank you very much, Mr. Heitkonig. I
21 appreciate your taking the time to be here.

22 Ms. Buchanan, you wish to be heard?

23 MS. BUCHANAN: Good afternoon. I promise to be the
24 briefest one here.

25 My one concern is that we have not yet seen their

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1 revised calculations from the receiver, as he discussed
2 earlier. And we just ask that Ms. Sayko be treated as all
3 other GFRDA investors are being treated in however the Court
4 decides to calculate their interim distributions. That's
5 really my only concern.

6 THE COURT: You definitely win for being the shortest.

7 Thank you very much, Ms. Buchanan.

8 Is there anyone who I have not heard from who wished
9 to speak that I overlooked, for whatever reason?

10 Mr. Gazes, it's your motion. As I customarily do in
11 an oral argument, I'll give you an opportunity to respond to
12 the various points that have been made.

13 MS. SHEVITZ: Judge, I would like to respond briefly
14 to some new points that were just made.

15 THE COURT: No. I'm sorry, Ms. Shevitz. I think --

16 MS. SHEVITZ: For instance, Mr. Swanson --

17 THE COURT: When I say no, that doesn't mean yes, go
18 ahead and talk over me. I don't know how to say that without
19 pointing out sort of basic lessons of civility, but you don't
20 get to do that, so no.

21 Go ahead, Mr. Gazes.

22 MR. GAZES: Thank you, your Honor. I don't want to
23 belabor the points with regard to those issues raised by
24 Mr. Begos. I think my papers set out fully the basis from
25 which we think they should not be given some priority elevation

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1 so that their claim is somewhat secured against the accounts.

2 I think your Honor clearly understands that.

3 I think the most difficult issue that faced me in
4 particular with regard to determining how to value these claims
5 is, where is the money really coming from to provide for an
6 interim distribution. And so I only could look to basically
7 one account, an account known as ATGF II. For me to become a
8 money manager now and start calculating what a GFRDA claimant
9 should have received or what an ATGF claimant should receive
10 when I have no specific investment vehicle to look to to
11 determine an appreciated value, I found it very difficult.
12 There were many scenarios that we looked at. My accountant is
13 here today to tell you that we must have gone through many
14 configurations on how these monies should be disbursed.

15 The bottom line is, the funds were commingled. There
16 is no specific investment vehicle for me to identify so that I
17 can pay the GFRDA an interest amount, and there is no specific
18 vehicle that I can pay an ATGF investor, because I don't know
19 what their investments were. Remember, my funds are in ATGF
20 II.

21 If I followed everybody's reasoning, we would all be
22 right back where my proposed interim distribution is. Since I
23 only have one pot of money in an account that's not
24 identifiable or traceable to any one specific investor, it's
25 clear that everything was commingled. We have to treat them

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1 similarly because I don't have any differentiating fund to say,
2 okay, this pot would go to GFRDA and this pot goes to ATGF.
3 That's why we came up with this scenario. We thought it would
4 be most fair to pool it for an interim purpose, and I do
5 emphasize it is interim, because I cannot discern how to treat
6 everybody. I'm not a money manager. My job is to figure out
7 what is the best-case scenario to get everybody back at least
8 now some portion of what they invested. People provided
9 statements that were scant. Some didn't get any statements.
10 Some got statements over a course of years and in a lot of
11 years did not get any statements at all. Allegations of funds
12 being used for purposes of paying a GFRDA investor while
13 utilizing ATGF investment funds. I believe that they are true,
14 but I have no certainty of that.

15 Yes, we could have conducted a forensic examination of
16 whatever books and records exist well into six figures at cost,
17 well into over a year to figure out. I have 30 years of
18 experience in back-drafting books and records on companies that
19 we investigate and it takes a long time to figure out with no
20 certainty that the books and records ultimately will tell us
21 what the answers are.

22 Furthermore, it's the criminal defendants who created
23 the books and records. So how reliable are those books and
24 records going to be for me? How can I say that a particular
25 investor in a GFRDA account, whose money is now in ATGF II,

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1 somewhat belongs to them, and I should attribute an interest
2 rate from that account, which may be prejudicial to an ATGF
3 investor whose money is also in the ATGF II account.

4 Bottom line is, the fairest and the best way to treat
5 everybody for this interim purpose and to get money out the
6 door, which I know everybody here supports other than the
7 defendants, who say to the contrary, but I don't agree, is to
8 treat it as a pooling method, give everybody back a portion of
9 what we believe their claim is, and move on to the next step.

10 The reason why the five or six public securities who
11 were listed as private securities have not been sold at this
12 point is because they are restricted. And you have to go
13 through an agent of the company to get the restrictions lifted
14 and you have to have an entity that's going to sell those
15 stocks for you once they are lifted. I've been in discussions
16 with JP Morgan. They have given me a fee structure where they
17 are willing to go out and lift the restrictions for me and then
18 sell the shares for me. We have sold the Sirius shares and
19 brought in almost 7 or \$8 million. That's the direction we are
20 heading in for the five or six public securities.

21 I've been on hold with the balance of the private
22 securities because it's an enormous amount of money to sell
23 them. They are not readily saleable on the public market. You
24 have to go through a secondary market and not many people are
25 willing to do it. I've been to five financial institutions

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1 besides JP Morgan to open up accounts for the purposes of
2 liquidating the balance of the securities. All have declined
3 to take these accounts on, and for various reasons. Mostly for
4 compliance and regulation reasons.

5 I have no further comments with regard to the specific
6 objections. I believe I've addressed them in my papers and the
7 SEC has addressed them. I don't believe that the claims appear
8 to be questionable at this time. I could, if the Court is
9 inclined, get a declaration from each of the claimants that the
10 claims are all under penalty of perjury, if that would somewhat
11 satisfy some of the parties here in terms of the validity of
12 the claims. Other than that, most of the claimants have
13 produced documentation in the most part to document what their
14 claim is, and I believe that those claims are valid.

15 With regard to Lily Cates's mother, I didn't state
16 that the claim wasn't valid. I said I just didn't have enough
17 time to make a determination as to its allowability. And I
18 think it should just be pushed off for the moment so that we
19 can see if we can come up with further information with regard
20 to that claim.

21 THE COURT: When you say pushed off for the moment,
22 you mean pushed off until after the interim distribution?

23 MR. GAZES: Pushed off until the next distribution,
24 and if we can discover in any way the allowability of the
25 claim. I just can't do that on such short notice.

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1 THE COURT: You would say after the initial
2 distribution?

3 MR. GAZES: Your Honor, we need to get money out the
4 door. The allowability of that claim for \$550,000 should hold
5 up the entire distribution at this time.

6 THE COURT: The point you made, the point before this
7 one, about the valuation for the sale of the securities that
8 remain held and that would require a secondary market, that's
9 something that will have to be addressed, not just for purposes
10 of the interim distribution.

11 MR. GAZES: That's correct, your Honor.

12 THE COURT: Thank you very much, Mr. Gazes.

13 I am going to reserve on this, but not for very long.
14 I am going to rule on the motion within the next couple of
15 weeks, and we will then hopefully start getting money out the
16 door to people who have been waiting a long time.

17 I want to thank everyone for being here today and
18 thank you for making the submissions that you made. I will
19 certainly take into consideration everything that was said and
20 everything that was submitted and then I'll be in touch.

21 Ms. Shevitz.

22 MS. SHEVITZ: Could I have five minutes to talk to my
23 clients?

24 THE COURT: Yeah, five minutes.

25 Marshals, that's okay? I think that's fair. Allow

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1 Ms. Shevitz to speak to her clients for five minutes or so
2 before they are taken out. That's fine.

3 Thanks. Have a good day.

4 Ms. Shevitz, I hope your arm is better and everyone
5 have a good weekend. Thanks.

6 o0o